

1988

# Chance Collar Company v. Lane Murray dba Rocky Mountain Sales and Samuel C. Thompson : Brief of Respondent

Utah Court of Appeals

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UTAH COURT OF  
BRIEF

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DOCKET NO. 880543 CA IN THE UTAH COURT OF APPEALS

CHANCE COLLAR COMPANY, )  
 )  
 Plaintiff/Respondent, )  
 )  
 vs. ) Case No. 880543-CA  
 )  
 LANE MURRAY dba ROCKY MOUNTAIN )  
 SALES and SAMUEL C. THOMPSON, )  
 )  
 Defendants/Appellant. )

BRIEF OF RESPONDENT

Appeal from the Eighth Judicial District  
Court of Uintah County, State of Utah  
The Honorable Richard C. Davidson, Judge.

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DEC 5 1988

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IN THE UTAH COURT OF APPEALS

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CHANCE COLLAR COMPANY,	)	
	)	
Plaintiff/Respondent,	)	
	)	
vs.	)	Case No. 880543-CA
	)	
LANE MURRAY dba ROCKY MOUNTAIN	)	
SALES and SAMUEL C. THOMPSON,	)	
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STATEMENT OF JURISDICTION AND NATURE  
OF THE PROCEEDINGS BELOW

This appeal is from the trial court's Summary Judgment. The Supreme Court of the State of Utah has jurisdiction to hear this appeal pursuant to Utah Code Ann. §78-2-2(3)j. The Supreme Court of the State of Utah has transferred this case to the Utah Court of Appeals pursuant to Utah Code Ann. §78-2-2(4).

Plaintiff, Chance Collar Company, (herein referred to as "Chance Collar") filed this action seeking to obtain possession of its drill collars. Defendant, Thompson, alleged that he was a good faith purchaser of the drill collars and was entitled to retain possession. In a companion case, LOR, Inc., vs. Lane Murray dba Rocky Mountain Sales and Samuel C. Thompson, Civil No. 12,386, a jury found that Defendant, Thompson, was not a good faith purchaser, but had committed fraud in acquiring similar oilfield equipment in the same transaction in which he acquired Chance Collar's drill collars. The trial court granted Plaintiff's Motion for Summary Judgment finding that Defendant, Thompson's, claim was barred by the doctrine of collateral estoppel and that Chance Collar was entitled to take possession of its drill collars.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

The issues presented in this appeal are as follows:

1. Whether Defendant is collaterally estopped from claiming title to Plaintiff's drill collars as a good faith purchaser when a jury in the LOR case decided that he acquired

the drill collars by fraud?

2. Whether certified copies of the pleadings, jury instructions and verdict of the LOR case and the fact that Judge Davidson presided in the LOR case provided a sufficient record on which to base his ruling of collateral estoppel in this case?

3. Whether Defendant can raise, for the first time on appeal, the issue as to whether the record before Judge Davidson was sufficient?

4. Whether alleged disputed facts, unrelated to circumstances giving rise to collateral estoppel, prevent entry of summary judgment?

#### STATUTES INVOLVED

None.

#### STATEMENT OF THE CASE

##### A. Nature of the Case.

Chance Collar filed this action seeking to recover its drill collars alleging that Defendant, Thompson, had fraudulently acquired the drill collars in concert with Defendant, Lane Murray, that any title Defendant, Thompson, had to the drill collars was voidable and Chance Collar was entitled to recover its drill collars. (R.22) Defendant, Thompson, in his Answer, claimed to be a good faith purchaser of the drill collars and claimed to have paid value for the drill collars. (R.47)

In a companion case entitled LOR, Inc., vs. Lane Murray dba Rocky Mountain Sales and Samuel C. Thompson, Civil No. 12,386,



also filed in Uintah County, Utah, LOR, Inc., (referred to herein as LOR) also sought to recover possession of its drill collars. Defendant, Thompson, in the LOR case also claimed that he was a good faith purchaser having paid value for the drill collars. (R.181-193) The case of LOR, Inc., vs. Lane Murray dba Rocky Mountain Sales and Samuel C. Thompson, was set for a jury trial beginning March 26, 1985. (R.194) The Chance Collar Company vs. Lane Murray dba Rocky Mountain Sales and Samuel C. Thompson, was set for jury trial beginning April 10, 1985. (R.130)

The LOR case was tried, beginning March 26, 1985, before a jury. The Judge presiding over the case was Judge Richard C. Davidson. The jury was instructed regarding fraud, duties of good faith in business transactions, the effect of fraud on acquiring title and the elements necessary to be a good faith purchaser. The jury was then instructed to determine whether Defendant, Thompson, as a good faith purchaser, owned the drill collars or whether LOR was entitled to the drill collars (R.199-208, Addendum 1) The jury ruled in favor of LOR (R.196) finding that Defendant, Thompson, had not acquired the drill collars as a good faith purchaser but through a fraudulent transaction with Lane Murray.

Chance Collar then moved for summary judgment on the basis that the transaction and facts by which Defendant, Thompson, claimed to have acquired the Chance Collar drill collars was the identical transaction as in the LOR case and since the jury had

ruled that Defendant, Thompson, was not a good faith purchaser in that transaction he was collaterally estopped from raising the issue in the present case. The trial court granted the Motion for Summary Judgment finding that (a) the issue in this case (Chance Collar) and the LOR case regarding Defendant's claim to possession was the same; (b) the evidence in the LOR case involved both the LOR and Chance Collar drill collars and showed a common fraudulent scheme and transaction; (c) the jury had ruled against Defendant, Thompson, regarding his claim of ownership of the drill collars; (d) the issue had been fully and fairly litigated and therefore, Chance Collar was entitled to possession of its drill collars. (R.214, Addendum 2)

**B. Statement of the Facts**

The Statement of Facts will refer both to the transcript from the LOR trial, which has been designated as part of the record on appeal and the court record in the Chance Collar case. References to the LOR transcript will be with a (T). References to the court record in the Chance Collar case will be referred to by (R).

LOR and Chance Collar are competitors in the oilfield industry. Their business is selling and renting oilfield equipment. (T.53) Defendant, Thompson, owns a machine shop where he repairs equipment and works as a machinist. (T.110)

On May 25, 1983 Lane Murray contacted LOR, Inc., with a request to purchase drill collars. (T.10) Drill collars are

oilfield equipment used to add weight to the drill bit. (T.9) As one of his credit references Lane Murray gave the name of Defendant, Thompson. (T.10-11) On August 3, 1983 Lane Murray contacted Chance Collar Company and ordered drill collars, also listing Defendant, Thompson, as one of his credit references. (T.53-54) Lane Murray and Defendant, Thompson, had adjoining offices in Vernal, Utah. (T.36) Both LOR and Chance Collar delivered the drill collars to that location and the collars were put in a yard which was owned by Defendant, Thompson. (T.37, 55)

When Chance Collar and LOR did not receive payment for their drill collars an investigation was started. On September 6, 1983 Hugh Vogel, on behalf of Chance Collar, and Agee Spidle, on behalf of LOR, attempted to locate Mr. Murray and the drill collars. (T.38-39, 56-57) They were unable to locate Mr. Murray. Mr. Spidle located LOR's drill collars in a yard owned by Land and Marine. (T.39) The agent for Land and Marine informed Mr. Spidle that Land and Marine was storing the drill collars for Defendant, Thompson, because he claimed a lien for machine work on the drill collars. (T.39) Mr. Vogel and Mr. Spidle went to Mr. Thompson's yard, met with his machinist and inquired as to the location of the Chance Collar drill collars. (T.40, 56) Mr. Thompson's machinist said that the drill collars had been in the yard the previous Friday, but must have been moved over the weekend and he did not know where they had been moved. (T.40, 56-57) Mr. Spidle and Mr. Vogel then contacted Mr. Thompson and

inquired as to what interest he claimed in the drill collars, as well as where they were located. Mr. Thompson stated that he had been paid in full for the work he did on the LOR drill collar and that he had no interest in the collars. He also stated that he had jointed the Chance Collar collars, but he did not know where the drill collars were, and that Lane Murray had them (T.41, 58) When the collars were eventually located they were in a yard owned by a friend of Defendant, Thompson, had been moved there by Defendant (T.124-125) and had not been jointed. (T.59)

On September 22, 1983, Dick Werner, on behalf of LOR located Lane Murray. Mr. Murray stated that he had just sold the drill collars and would be paid in two weeks. He refused to disclose the name of the buyer. (T.82) Neither LOR or Chance Collar have been able to locate Mr. Murray since that date.

LOR did not get paid and the drill collars remained at Land and Marine's yard. On October 20, 1983 LOR filed a lawsuit against Mr. Murray and obtained a Writ of Attachment attaching the drill collars. (R.182, T.92) Chance Collar, with the assistance of the FBI, located its drill collars in February of 1984. (T.59) After LOR attached its drill collars Defendant, Thompson, on December 5, 1983, for the first time claimed that he was the owner of both the LOR and Chance Collar drill collars. (T.83, 166-167)

Defendant, Thompson, admitted that the drill collars had been stored in his yard. (T.121) and that he had the Chance

Collar drill collars moved to a friend's place, 20 miles from Vernal, (T.124-125) where the FBI located them. Defendant, Thompson, claimed that he purchased both the LOR and the Chance Collar drill collars from Lane Murray on August 8, 1983. (T.126) He claimed he paid in excess of \$94,000.00 for the collars. (T.168-169) He gave no valid explanation as to why he moved the collars and denied ownership until December 5, 1983. Defendant, Thompson, claimed he paid for both groups of drill collars through a combination of trading machine work and a check for \$25,123.60 dated October 7, 1983. (T.135, 169-170) Defendant, Thompson's, records which he claimed supports this claim, had invoices out of sequence, dates changed and notations in different handwriting and ink color than the original part of the invoice. (T.89-90) The check for \$25,123.60 which Defendant claimed paid for the drill collars had a notation stating "re: gaskets, nuts and collars" (T.90) which writing was different from the other writing on the check. (T.91)

In January, 1984 Defendant intervened in the LOR lawsuit. (R.183, 186) The LOR drill collars were sold, by stipulation of the parties, with the money being held by the court. The Complaint, in the Chance Collar case, was amended to add Defendant (R.21) and after a hearing, an injunction was entered which prohibited Defendant from disposing of the drill collars. (R.92) In both cases Chance Collar and LOR claimed Defendant used fraud to acquire the drill collars while he claimed to be a

good faith purchaser for value.

The LOR case was set for trial before a jury to begin March 26, 1985. The Chance Collar case was set to follow immediately thereafter, before a jury beginning April 10, 1985. At the LQ trial representatives from LOR, Chance Collar and Defendant testified regarding the transactions involving both sets of drill collars. (T.32, 52, 67) Defendant's claim as to how he acquired and paid for both sets of drill collars was identical and arose out of the same transaction. The jury was instructed that a party who acquires title to goods by fraud acquires voidable title and that the seller of the goods can rescind the transaction and retake possession of the goods. (R.199-205) The jury was also instructed that a party having voidable title could transfer good title to a good faith purchaser for value and what was necessary to be a good faith purchaser. (R.205-207) The jury was then instructed that if it found that Defendant, Thompson, was a good faith purchaser he was entitled to the proceeds from the drill collars and damages, but if he was not a good faith purchaser then LOR was entitled to the proceeds from its drill collars.

Counsel, for both parties, addressed the jury on whether Defendant acquired the drill collars by fraud or as a good faith purchaser. (T.260-266, 278-282) The jury returned its verdict finding in favor of LOR and finding that Defendant, Thompson, was not a good faith purchaser. (R.196) Based on the jury verdict

the court then entered its Order finding LOR was entitled to the proceeds from the sale of its drill collars and that Defendant, Thompson's, claim was dismissed with prejudice. (R.197)

#### SUMMARY OF ARGUMENT

1. Defendant claimed that he acquired both LOR's and Chance Collar's drill collars as a good faith purchaser. The facts relating to his acquisition of both sets of drill collars is identical. Both LOR and Chance Collar claimed that those facts constituted fraud while Defendant claimed those facts showed he was a good faith purchaser. Defendant presented that issue to a jury in the LOR case. In the trial of the LOR case the jury decided that the facts supported LOR and Chance Collar's claims of fraud. Defendant should be collaterally estopped from relitigating that issue.

2. Judge Richard C. Davidson presided at the LOR trial, heard the witnesses testify, listened to argument by counsel and also had certified copies of the pleadings, jury instructions and verdict from the LOR case when he signed and entered the Summary Judgment. That information provided a substantial record on which Judge Davidson based his decision. The Defendant never objected to the sufficiency of the record or attempted to supplement the record. He should not be allowed to complain about the record for the first time on appeal.

3. The Summary Judgment, based on collateral estoppel, arose from Defendant's claim of how he acquired the drill

collars. The time period involved was August through December o 1983. The Defendant's only defense to the Motion for Summar Judgment was that there was a dispute as to the day in July, 198 when two telephone calls were made relating to credit. The tria court properly ruled that the telephone calls in July, 1983 wa not material to the question of collateral estoppel, was no relevant to Defendant's claim of how he acquired the drill collars and did not preclude entry of Summary Judgment.



### ARGUMENT

POINT I. DEFENDANT IS BARRED FROM CLAIMING THAT HE IS A GOOD FAITH PURCHASER OF THE CHANCE COLLAR DRILL COLLARS BECAUSE A JURY HAS ALREADY RULED THAT HE ACQUIRED THE COLLARS BY FRAUD.

The issue in both the LOR and Chance Collar cases was whether Defendant, Thompson, was a good faith purchaser of the drill collars or acquired the same by fraud in concert with Lane Murray. The facts regarding Defendant's acquisition of both sets of drill collars was the same. The drill collars were delivered to Thompson's yard. He then moved the collars to other yards. On September 6, 1983, when contacted by representatives from LOR and Chance Collar, he denied any claim to the drill collars. (T.38-39) It was not until December 5, 1983 when the LOR drill collars had been seized pursuant to a Writ of Attachment that he claimed to have purchased the drill collars. (T.83, 166) His claim for purchasing the drill collars was that he had acquired the drill collars on August 8, 1983 from Lane Murray and that he paid for them through a series of trading transactions. (T.126, 169-170) Since the issues are the same, the facts are the same, the Defendant is the same and the issues have been fully and fairly litigated, the trial court acted correcting in ruling that Defendant, Thompson, was collaterally estopped from litigating the issue a second time.

Collateral estoppel applies when; (1) the issue decided in a prior adjudication is identical with the one presented in the action in question; (2) there was a final judgment on the merits;

(3) the party against whom the plea is asserted, is a party, or in privity to the party, to the prior adjudication; and (4) the issue was competently, fully and fairly litigated. Copper State Thrift and Loan vs. Bruno, 735 P.2d 387 (Utah 1987), Wilde vs. Mid-Century Insurance Company, 635 P.2d 417 (Utah 1981), Searl Brothers vs. Searle, 588 P.2d 689 (Utah 1978). The factual issue that was decided in the prior action should be the same factual issue presented in the second action and that issue must be essential to the resolution of the prior suit. Copper State Thrift and Loan vs. Bruno, supra, Robertson vs. Campbell, 67 P.2d 1226 (Utah 1983). Collateral estoppel may be invoked by either the Plaintiff or the Defendant in the subsequent action. It is not necessary that the party asserting collateral estoppel be a party to or in any way connected to the previous lawsuit. The party against whom collateral estoppel is asserted must be a party or in privity to the party who lost the issue in the prior case. Robertson vs. Campbell, at 1230. The purpose of collateral estoppel is to prevent relitigation of issues which a party has already litigated, to save the cost of multiple lawsuits, and prevent inconsistent decisions. Mel Trimble Real Estate vs. Monte Vista Ranch, Inc., 758 P.2d 451, 453 (Utah 1988).

There is no question in this case that Defendant, Thompson, is the same party whom the jury ruled against in the LOR case, that the decision by the jury was final, on the merits and that

the issue was completely, fully and fairly litigated. The question raised by the Defendant is whether the issue was the same in the LOR case and the Chance Collar case. Several Utah cases have considered that question and given guidance on making that decision.

In Copper State Thrift and Loan vs. Bruno, 735 P.2d 387 (Utah 1987) Michael Bruno and Stephen Bruno signed as co-makers on a Note. Stephen Bruno filed for bankruptcy. At the confirmation hearing in the Bankruptcy Court the Court found that there was an agreement between Stephen Bruno and Copper State Bank to accept the collateral as full satisfaction for the Note. Copper State then sued Michael Bruno on the Note. The Utah Court of Appeals held that Copper State was collaterally estopped by the decision rendered by the Bankruptcy Court. The Court held that the factual issue regarding payment of the Note was the same and therefore, Copper State Bank was bound by the decision of the Bankruptcy Court even as it related to Michael Bruno.

In Robertson vs. Campbell, 674 P.2d 1226 (Utah 1983) a jury ruled that a will was invalid because the signer of the will, Marinus Johnson, had acted under undue influence. The parties then entered into a second lawsuit regarding the validity of a trust executed by Marinus Johnson. The Defendants, which had been the losing parties in the will litigation, took the position that collateral estoppel did not apply because it was a different issue, arguing that the issue in the first case was the validity

of a will and the issue in the second case was the validity of trust. The court held that the Defendants were collaterally estopped. In making that decision the court said:

The applicability of collateral estoppel does not depend on whether the claims for relief are the same. (citations omitted) What is critical is whether the issue that was actually litigated in the first suit was essential to resolution of that suit and is the same factual issue as that raised in a second suit.

The issue in the instant case which was previously litigated against the defendant is whether the defendant exercised undue influence over the deceased at the time of the making of the documents in question.

Id. at 1230.

In Biri-Newport, Inc., vs. Leber, 739 P.2d 614 (Utah 1985) the court held collateral estoppel applied because the issue was whether there was a warranty for the goods. The fact that the materials in question were delivered at different times and the party against whom relief was sought was different did not prevent application of the doctrine of collateral estoppel. See also, Wilde vs. Mid-Century Insurance Company, 635 P.2d 417 (Utah 1981) holding that the decision in an action against a tortfeasor for wages barred the parties from raising a claim for wages against the provider of the no-fault insurance.

The doctrine of collateral estoppel has been applied where the issue is whether one is a bona fide purchaser or used bad faith in acquiring title. A prior decision on that issue was held to be binding in a subsequent action. Moore vs. Sun Lumber Company, 276 S.E.2d 797 (W. Va. 1981). The doctrine is also

applied in cases involving fraud. In Imen vs. Glassford, 247 Cal. Rptr. 514, 201 Cal. App. 3d. 898 (1988) the court held that a decision by the Real Estate Commissioner that the broker had acted fraudulently, collaterally estopped him from defending against an action for fraud brought by his client. In Weiner vs. Mitchell, Silberberg and Knupp, 144 Cal. App. 3d 39, 170 Cal. Rptr. 533 (1980) the court held that a conviction of securities fraud barred the Defendant from denying his fraudulent conduct in a subsequent civil action.

The critical factual issue in both the LOR and Chance Collar cases is the same and is governed by the same set of facts. The critical question is whether Defendant, Thompson, acquired the drill collars as a good faith purchaser or whether he acquired them through fraudulent conduct in concert with Lane Murray. The facts on that issue are the same. The drill collars were ordered by Lane Murray and delivered to the yard owned by Defendant, Thompson. (T.37, 55) When LOR and Chance Collar were not paid for their drill collars, representatives for those companies, met with Mr. Thompson on September 6, 1983. (T.38-39, 56-57) At that time he denied that he had any interest or ownership to the drill collars and denied knowledge of their whereabouts. (T.41, 58) Subsequently, at trial, Mr. Thompson admitted that he had both sets of collars moved from his yard to other yards. It was not until December 6, 1983 that Mr. Thompson claimed that he owned the drill collars. (T.83) That occurred only after LOR had, by

court Order, attached its drill collars and Chance Collar has solicited the assistance of the FBI in locating its drill collars. Mr. Thompson then claimed that he acquired all of the drill collars on August 8, 1983 from Lane Murray and that he acquired both sets of drill collars through trading work with Mr. Murray. (T.135, 169) As proof of his claim to both sets of collars he submitted the same records which consisted of a few invoices and checks. The invoice numbers and check numbers were out of sequence and did not support Mr. Thompson's version of the facts. (T.89-91) That factual issue was fully, fairly and competently litigated. Mr. Thompson was represented by counsel and testified. The jury ruled against him. The issue has been fully decided and Mr. Thompson should not be allowed to waste the court's time and litigate the issue again.

POINT II. THE TRIAL COURT HAD A SUBSTANTIAL RECORD FROM THE LOR CASE ON WHICH TO BASE ITS DECISION. DEFENDANT DID NOT OBJECT TO OR SUPPLEMENT THE RECORD BEFORE THE TRIAL COURT AND THEREFORE, SHOULD NOT BE PERMITTED TO CHALLENGE THE SUFFICIENCY OF THE RECORD FOR THE FIRST TIME ON APPEAL.

Judge Davidson presided at the jury trial in the LOR case and was very familiar with the testimony presented, the issues raised, the argument of counsel, the instructions given to the jury and the decision rendered by the jury. A transcript of that trial has been included as part of the record on this Appeal. In addition, Judge Davidson had certified copies of the Complaint, the Answer to the Counterclaim, Verdict Form, Order and Judgment on the Verdict and Jury Instructions from the LOR case prior to his signing the Summary Judgment. Those documents are included with the record on this Appeal. Judge Davidson had a substantial record from the LOR case on which to base his decision in granting Summary Judgment in this case. Additionally, the Defendant at no time claimed that the record was insufficient to make a decision until the filing of his Brief on appeal.

Defendant, for the first time on appeal, claims that the record before the trial court, regarding the LOR case, was insufficient for the court to make a decision. The facts do not support that claim. The jury verdict in the LOR case was rendered on March 27, 1985. (R.196) The Order and Judgment based on that decision was rendered April 3, 1985. (R.198) The Motion for Summary Judgment in the Chance Collar case was filed on March 29, 1985. On April 4, 1985 Defendant filed bankruptcy. (R.154) In

August, 1985 the stay was lifted and on August 22, 1985 Defendant filed his reply to the Motion for Summary Judgment. In his reply Defendant admitted that the issue was the same, but as his defense claimed that there were factual differences regarding when two telephone calls made in July of 1983. (R.161) There was no claim made that the record was insufficient for the trial court to make a decision. Defendant did not file any Affidavit nor furnish other evidence to change his version of how he claimed to have acquired the drill collars. (R.158) On September 17, 1985 Chance Collar filed with the court certified copies of documents from the LOR file. Those documents included the Complaint, Answer and Counterclaim, the Verdict Form, Jury Instructions and Order and Judgment on the Verdict. (R.179) No objection to those documents was filed by the Defendant. On October 1, 1985 the court signed and entered its Summary Judgment. (R.214)

The case of Mel Trimble Real Estate vs. Monte Vista Ranch, Inc., 758 P.2d 451 (Utah 1988) discussed the question of what documents are needed from the prior case to support a finding of collateral estoppel. In that particular case the only record of the prior adjudication was a decision by the Supreme Court. The Plaintiff argued that the record was insufficient to support a finding of collateral estoppel. The court ruled against Trimble on two basis. The court first held that if Trimble believed more of the record of the prior proceeding was necessary it was his



burden to produce additional documentation. Secondly, the court held that his claim should be rejected because the issue was never raised before the trial court, but was raised for the first time on appeal. Mel Trimble at 455. In the present case, the record before Judge Davidson, included his having sat through a two (2) day trial and heard the testimony of witnesses and argument of counsel, instructed the jury and received their decision. He had certified copies of the pleadings, the jury instructions and the verdict form. If Defendant felt that was insufficient he had the burden to provide any additional documentation. Defendant, as in Mel Trimble, did not raise any question regarding the sufficiency or adequacy of the record before the trial court, but raises that question for the first time on appeal. Therefore, his claim should also be denied on that basis.

POINT III. THE TIMING OF TWO TELEPHONE CALLS IN JULY OF 1983 WAS NOT MATERIAL TO THE ISSUE OF WHETHER DEFENDANT WAS COLLATERALLY ESTOPPED FROM CLAIMING TO BE A GOOD FAITH PURCHASER OF THE DRILL COLLARS.

Defendant's argument that there are issues of fact regarding the timing of two telephone calls in July of 1983 is not material to the issue in this case. Defendant argued to the trial court when opposing the Motion for Summary Judgment, that there was a dispute regarding the timing of two telephone calls in July of 1983. (R.158, 161) The trial court held that a contradiction or dispute on those facts was not material to the issue that was critical to decide the Motion for Summary Judgment. The trial court's ruling on that question was correct.

The issue before the trial court, on the Motion for Summary Judgment, was whether the Defendant's claim of possession of the drill collars in the Chance Collar case was the same issue as that in the LOR case and whether the factual situation was the same. Defendant, in his Memorandum, (R.158) admitted that the issue was the same. He made no claim that the telephone calls had any bearing on how he acquired the drill collars, but rather related to credit information about Lane Murray. The facts regarding the acquisition by Defendant of the drill collars is the same in both cases. Those facts are that the drill collars were delivered to Thompson's yard, that he had the drill collars moved and then in September denied any ownership or claim to the drill collars. It was not until December that he then claimed to own the drill collars. He then claimed to have acquired the

drill collars on August 8, 1983 through a series of trades. The records Defendant produced did not support that claim. The records, the transactions and claims by Defendant, Thompson, regarding his acquiring title to the drill collars were identical and the legal issue as to whether he was a good faith purchaser or acquired the same through fraud was the same. The timing of two telephone calls regarding credit information was not related to nor material to that issue.

CONCLUSION

Defendant has litigated and lost his claim that he was good faith purchaser of the drill collars. The trial court acted properly in ruling that he was barred from relitigating the issue. The decision of the trial court should be sustained.

Respectfully submitted this 2 day of December, 1988.

NIELSEN & SENIOR  
Attorneys for Plaintiff/  
Respondent

By:   
Clark B. Allred

## ADDENDUM

ADDENDUM 1

JURY INSTRUCTION NO. \_\_\_\_\_

The law requires good faith in every business transaction and does not allow one to intentionally deceive another by false representations. Such is referred to as fraud. To constitute fraud a person must make a representation of fact which he knows be untrue or else is recklessly made, intending to deceive another and the other person relies on the statement resulting in injury or loss.

STATE OF UTAH )  
County Of Uintah ) ss.  
I Dorothy C. Luck, Clerk of Uintah County, Utah, and  
ex-officio Clerk of the District Court, do hereby certify  
that the above and foregoing is a full, true and correct  
copy of the original document which is on file in my  
office.  
In witness whereof I hereunto set my hand and seal of  
office at \_\_\_\_\_ A.D. 19\_\_\_\_  
Dorothy C. Luck  
Clerk of Uintah County, Utah

JURY INSTRUCTION NO. \_\_\_\_\_

Good faith means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

JURY INSTRUCTION NO. 13

A person who acquires title to goods by fraud has voidable title. "Voidable Title" means the seller of the goods has the right to rescind the transaction and to retake possession of the goods.



JURY INSTRUCTION NO. \_\_\_\_\_

It is an act of fraud to purchase or obtain goods with a preconceived intention not to pay for them.

JURY INSTRUCTION NO. \_\_\_\_\_

A person who has voidable title has the power to transfer good title to a good faith purchaser for value. If the person is not a good faith purchaser then he does not acquire good title and the seller can retake possession of the goods.

JURY INSTRUCTION NO. \_\_\_\_\_

The Defendant, to qualify as a good faith purchaser, must prove that he purchased the drill collars for value and without notice of Plaintiff's claim to the drill collars.

JURY INSTRUCTION NO. 19

In order to find in favor of Samuel C. Thompson, you must find from a preponderance the following:

- (1) that Samuel C. Thompson as a good faith purchaser, purchased certain drill collars from the defendant, Lane Murray;
- (2) that plaintiff, Lor, Inc., attached the property (drill collars) and that Samuel C. Thompson was not able to use said drill collars or otherwise sell or lease them from December 1, 1983 to the date of the stipulated sale;
- (3) that plaintiff wrongfully caused the attachment of the drill collars to issue; and
- (4) that the action of Lor, Inc. was wilfull and malicious and done with intent to damage Samuel C. Thompson.

ADDENDUM 2

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IN THE SEVENTH JUDICIAL DISTRICT COURT OF UINTAH COUNTY  
STATE OF UTAH

---

HANCE COLLAR COMPANY,	)	
	)	SUMMARY JUDGMENT
Plaintiff,	)	
	)	
vs.	)	
	)	
LANE MURRAY dba ROCKY MOUNTAIN	)	
SALES and SAMUEL C. THOMPSON,	)	
	)	
Defendants.	)	Civil No. 12,352

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The above captioned matter came before the Court pursuant to Plaintiff's Motion For Summary Judgment which motion was based on the doctrine of collateral estoppel. The Court having reviewed the Motion and Memoranda submitted by both parties and the pleadings and documents filed herein, and the Court having presided at the trial of LOR, Inc. vs. Lane Murray dba Rocky Mountain Sales and Samuel C. Thompson, Civil No. 12,386, District Court, Uintah County and being familiar with the file and having heard the testimony and having examined the documents presented at the trial of that case, and the Court having reviewed the certified copies from the LOR file and the Court being familiar with the issues raised in the LOR case and the verdict rendered in that case, hereby finds as follows:

1. The issues in the case of LOR, Inc. vs. Murray et al related to the ownership of certain drill collars. The issues were whether Defendant, Thompson, had acquired title to the drill collars as a good faith purchaser or had acquired the drill collars through fraud in concert with Defendant, Murray.

2. The evidence presented in LOR, Inc. vs. Murray showed a common scheme whereby Defendants, Murray and Thompson, acquired both the LOR Inc. and the Chance Collar Company drill collars by fraud. Defendant, Thompson's claim for payment for both sets of drill collars was based on the same set of transactions.

3. At the conclusion of the LOR case, the jury ruled in favor of LOR and against Defendant, Thompson.

4. The issues in this case, Chance Collar Company vs. Murray et al are identical to the issues adjudicated in LOR, Inc. vs. Murray et al.

5. The jury, after hearing the evidence, ruled against Defendant, Thompson, in the LOR case finding he was not a good faith purchaser but had acquired the drill collars by fraud. Based on the jury verdict, a final judgment on the merits has been entered.

6. Defendant, Samuel C. Thompson, in the LOR case is the same person as Samuel C. Thompson in this case.

7. The issues presented in both the LOR case and this case were completely, fully and fairly litigated at the trial of the LOR case. Both parties were represented by their lawyers and

vidence regarding both the LOR drill collars and the Chance collar Company drill collars was presented showing the common fraudulent scheme of acquiring the drill collars by the defendants.

8. The affidavit submitted by Defendant, Thompson, in opposition to the Motion For Summary Judgment does not raise any material issues of fact as it relates to the defense of collateral estoppel.

9. Based on the doctrine of collateral estoppel, Plaintiff is entitled to judgment as a matter of law.

The Court being fully advised, and based on the findings of the Court, it is hereby;

ORDERED, ADJUDGED and DECREED that:

1. Plaintiff's Motion For Summary Judgment is hereby granted.

2. Plaintiff, Chance Collar Company, is entitled to immediate possession of the 12 slick drill collars, 9" O.D. x 2½" O.D. x 31.6 ft. long blank ended drill collars being held pursuant to the preliminary injunction entered herein and Defendant, Thompson, is hereby ordered to deliver immediate possession of the same to Plaintiff or its representatives and the Sheriff of Uintah County, Utah is hereby ordered to assist Plaintiff in obtaining possession of those drill collars. The bond posted by the Plaintiff as a condition of the preliminary injunction is hereby discharged.

3. The counterclaim of Defendant, Thompson, against Plaintiff is hereby dismissed.

4. The issue as to any damages incurred by the Plaintiff for two drill collars which were sold prior to entry of the preliminary injunction is hereby reserved together with the question of costs.

DATED this 7<sup>th</sup> day of ~~September~~, 1985.

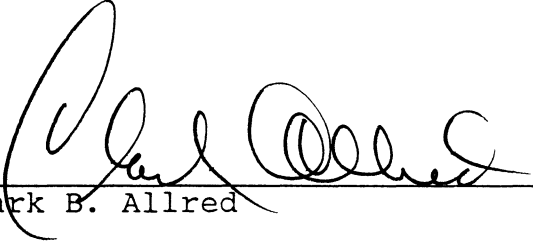
Richard C. Davidson  
District Judge  
Richard C. Davidson



CERTIFICATE OF MAILING

I hereby certify that I mailed four copies of the foregoing Brief of the Plaintiff/Respondent, postage prepaid and addressed this 2 day of December, 1988 to:

John C. Green  
311 South State, Suite 280  
Salt Lake City, Utah 84111

  
Clark B. Allred